

Gray Approved Illegal Entries, Ex-Agent Says

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A retired FBI official testified yesterday his superior told him in 1972 that acting FBI director L. Patrick Gray III had approved wiretaps and break-ins to hunt for fugitive leaders of the radical Weather Underground.

Arbor Gray also said that later, he received approval from the superior, former bureau intelligence chief Edward S. Miller, for a break-in.

Arbor Gray testified on the 11th day of the trial of Miller and W. Mark Felt, former No. 2 official of the FBI, who are charged with approving illegal break-ins in violation of the civil rights of private citizens.

The former chief of the internal security section in the FBI's intelligence division provided the first testimony that L. Patrick Gray had approved such surreptitious entries.

The issue is critical because U.S. District Judge William Bryant has ruled Miller and Felt may use as a defense the theory that they were following orders from a higher authority. Such an assertion led an appeals court to overturn the convictions of Watergate burglars Bernard Barker and Eugenio Martinez.

L. Patrick Gray, who faces a separate trial on the same charges, contends he never gave his approval for the break-ins.

Arbor Gray testified that shortly after L. Patrick Gray succeeded the late FBI director J. Edgar Hoover in May 1972, the acting director met with officials of the bureau's intelligence division in Miller's FBI office.

Following the meeting, Arbor Gray

said, Miller left the building with L. Patrick Gray. Arbor Gray said he then made a telephone call in the next room, and noticed from the window that Gray and Miller were "engaged in a conversation" across the street.

He said Miller returned and enthusiastically told aides L. Patrick Gray "was receptive to the use of confidential techniques against the Weatherman... provided they were used on a selective basis and approval was given from the highest level."

Asked to define "confidential techniques," Arbor Gray said he understood that category to include wiretaps and "probably... surreptitious entries."

Arbor Gray said he later left his intelligence post to take charge of the FBI's New York office. In early 1973, he said, he phoned Miller and asked permission "to contact an anonymous source"—FBI jargon for a break-in—in a hunt for the Weather Underground fugitives. He said Miller told him he would "check with Mark [Felt]," and that Miller subsequently gave quick approval.

Arbor Gray testified on cross-examination by defense lawyers that for years FBI agents were commended for their roles in break-ins in sensitive cases.